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THE REALIZATION OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Expert seminar on the practice of forced evictions
(Geneva, 11-13 June 1997)

Report of the Secretary-General

Introduction

1. The Commission on Human Rights, at its fifty-first session, in its resolution 1995/29 of 24 August 1995, requested the Secretary-General to convene an expert seminar on the practice of forced eviction and the relationship of this practice to internationally recognized human rights with a view to developing comprehensive human rights guidelines on development-based displacement. This request was endorsed by decision 1996/104 of the Commission on Human Rights and decision 1996/290 of the Economic and Social Council.

2. The request to elaborate guidelines was made within the framework of the work of other United Nations bodies on this issue, notably that of the United Nations Centre on Human Settlements (Habitat), and in particular in the light of the conclusions of the United Nations Conference on Human Settlements (Habitat II) held in Istanbul in June 1996, and the recognition of the need to avoid unnecessary duplication.

3. In response to the above request, the Secretary-General convened the expert seminar on the practice of forced evictions at the Palais des Nations, Geneva, from 11 to 13 June 1997. The seminar brought together seven experts with expertise in and practical experience of the human rights dimensions of

forced evictions and development-based displacement, and observers for Governments, specialized agencies and non-governmental organizations. The experts participating in the seminar were: Ms. Fides Bagasao (Philippines); Mr. Kenneth Fernandes (Cambodia); Mr. Scott Leckie (United States of America); Mr. Enrique Ortiz (Mexico); Ms. Ana Selman (Dominican Republic); Mr. Henk Smith (South Africa); Ms. Jane Weru (Kenya). Mr. Felix Morka, of the non-governmental organization Habitat International Coalition, was elected Chairman by acclamation and Mr. Leckie was elected Rapporteur. A representative of the High Commissioner for Human Rights opened the seminar.

4. The seminar adopted the following agenda:

1. Opening and welcome address

2. Election of officers

3. Adoption of the agenda

4. Overview of the issue of forced evictions and development-based displacement and relevant human rights standards affected

5. National policies and legislation concerning development-based displacement

6. Remedies, compensation and restitution

7. The role of the United Nations and the international community in preventing and remedying forced evictions and involuntary resettlement

8. Review of existing guidelines on development-based displacement and recommendations for comprehensive human rights guidelines

9. Closing session.

5. The seminar had before it the following five working papers which had been commissioned with a view to eliciting specific experiences of forced evictions at the national and regional levels as well as on the relevance of forced evictions to universal human rights standards and the possible content for guidelines on development-based displacement: "Forced evictions and development-based displacement", prepared by Mr. Smith (HR/SEM.1/FE/1997/WP.1); "Securing human rights and preventing forced evictions within the context of development-based displacement", prepared by Mr. Leckie (HR/SEM.1/FE/1997/WP.2); "Overview of evictions in Asia", prepared by Mr. Fernandes (HR/SEM.1/FE/1997/WP.3); "State urban policies and evictions in the city of Santo Domingo", Dominican Republic, prepared by Ms. Selman (HR/SEM.1/FE/1997/WP.4); "Development-based displacement: recent experiences in the Philippines", prepared by Ms. Bagasao (HR/SEM.1/FE/1997/WP.5).

6. The guidelines were elaborated by the experts and complemented by comments and suggestions from the observers for Governments, specialized agencies and non-governmental organizations. The text of the guidelines as adopted is contained in the annex.

Annex

THE PRACTICE OF FORCED EVICTIONS: COMPREHENSIVE HUMAN RIGHTS GUIDELINES ON DEVELOPMENT-BASED DISPLACEMENT

Preamble

The expert seminar on forced evictions,

Recalling the human rights standards established pursuant to the International Bill of Human Rights,

Whereas many international treaties, resolutions, decisions, general comments, judgements and other texts have recognized and reaffirmed that forced evictions constitute violations of a wide range of internationally recognized human rights,

Recalling Economic and Social Council decision 1996/290, Commission on Human Rights resolution 1993/77 and Sub-Commission on Prevention of Discrimination and Protection of Minorities resolution 1996/27,

Reaffirming that under international law every State has the obligation to respect and ensure respect for human rights and humanitarian law, including obligations to prevent violations, to investigate violations, to take appropriate action against violators, and to afford remedies and reparation to victims,

Reaffirming that development is a comprehensive economic, social, cultural and political progress, which aims at the constant improvement of the well-being of the entire population and of all individuals on the basis of their active, free and meaningful participation in development and in the fair distribution of benefits resulting therefrom,

Whereas the Vienna Declaration and Plan of Action stipulated that while development facilitates the enjoyment of all human rights, the lack of development may not be invoked to justify the abridgement of internationally recognized human rights,

Recognizing the widespread nature of the practice of forced evictions and that when forced evictions are carried out they can occur in a variety of contexts including but not limited to conflicts over land rights, development and infrastructure projects, such as the construction of dams or other large-scale energy projects, land acquisition measures associated with urban renewal, housing renovation, city beautification programmes, the clearing of land for agricultural purposes or macro-urban projects, unbridled speculation in land, and the holding of major international events such as the Olympic Games,

Conscious that forced evictions intensify social conflict and inequality and invariably affect the poorest, most socially and economically vulnerable sectors of society, specifically women, children and indigenous peoples,

Conscious also of guidelines developed by international financial and other institutions on involuntary displacement and resettlement,

Resolved to protect human rights and prevent violations due to the practice of forced evictions,

Adopts the following guidelines:

I. BACKGROUND ISSUES

Scope and nature of the Guidelines

1. The present Guidelines address the human rights implications of the practice of forced evictions associated with development-based displacement in urban and rural areas. The Guidelines reflect and are consistent with international human rights law and international humanitarian law and should be subject to the widest possible application.

2. Having due regard to all relevant definitions of the practice of forced evictions under international human rights provisions and instruments, the present Guidelines apply to instances of forced evictions in which there are acts and/or omissions involving the coerced and involuntary removal of individuals, groups and communities from their homes and/or lands and common property resources they occupy or are dependent upon, thus eliminating or limiting the possibility of an individual, group or community residing or working in a particular dwelling, residence or place.

3. While there are many similarities between the practice of forced evictions and internal displacement, population transfer, mass expulsions, mass exodus, ethnic cleansing and other practices involving the coerced and involuntary movement of people from their homes, lands and communities, forced evictions constitute a distinct practice under international law. Persons, groups and communities subjected to or threatened with forced evictions form, therefore, a distinct group under international human rights law.

4. Forced evictions constitute prima facie violations of a wide range of internationally recognized human rights and can only be carried out under exceptional circumstances and in full accordance with the present Guidelines and relevant provisions of international human rights law.

II. GENERAL OBLIGATIONS

5. While forced evictions can be carried out, sanctioned, demanded, proposed, initiated or tolerated by a variety of distinct actors, responsibility for forced evictions under international law is ultimately held by States. This does not, however, relieve other entities from obligations in this regard, in particular Occupying Powers, international financial and other institutions or organizations, transnational corporations and individual third parties, including public and private landlords or landowners.

6. States should apply appropriate civil or criminal penalties against any person or entity, within its jurisdiction, whether public or private, carrying out any forced evictions not in full conformity with applicable law and the present Guidelines.

7. States should object, through the appropriate international legal mechanisms, to the carrying out of forced evictions in other States when such forced evictions are not in full conformity with the present Guidelines and relevant provisions of international human rights law.

8. States should ensure that international organizations in which they are represented refrain from sponsoring or implementing any project, programme or policy which may involve the carrying out of forced evictions not in full conformity with international law and the present Guidelines.

III. SPECIFIC PREVENTATIVE OBLIGATIONS

The obligation of maximum effective protection

9. States should secure by all appropriate means, including the provision of security of tenure, the maximum degree of effective protection against the practice of forced evictions for all persons under their jurisdiction. In this regard, special consideration should be given to the rights of indigenous peoples, children and women, particularly female-headed households and other vulnerable groups. These obligations are of an immediate nature and are not qualified by resource-related considerations.

10. States should refrain from introducing any deliberately retrogressive measures with respect to de jure or de facto protection against forced evictions.

11. States should ensure that adequate and effective legal or other appropriate remedies are available to any persons claiming that his/her right of protection against forced evictions has been violated or is under threat of violation.

12. States should ensure that eviction impact assessments are carried out prior to the initiation of any project which could result in development-based displacement, with a view to fully securing the human rights of all potentially affected persons, groups and communities.

The obligation to prevent homelessness

13. States should ensure that no persons, groups or communities are rendered homeless or are exposed to the violation of any other human rights as a consequence of a forced eviction.

The obligation to adopt appropriate measures of law and policy

14. States should carry out comprehensive reviews of relevant national legislation with a view to ensuring the compatibility of such legislation with the norms contained in the present Guidelines and other relevant international human rights provisions. In this regard, special measures shall be taken to ensure that no forms of discrimination, statutory or otherwise, are applied in relation to property rights, housing rights and access to resources.

15. States should adopt appropriate legislation and policies to ensure the protection of individuals, groups and communities from forced eviction, having due regard to their best interests. States are encouraged to adopt constitutional provisions in this regard.

The obligation to explore all possible alternatives

16. States should fully explore all possible alternatives to any act involving forced eviction. In this regard, all affected persons, including women, children and indigenous peoples, shall have the right to all relevant information and the right to full participation and consultation throughout the entire process and to propose any alternatives. In the event that agreement cannot be reached on the proposed alternative by the affected persons, groups and communities and the entity proposing the forced eviction in question, an independent body, such as a court of law, tribunal, or ombudsman, may be called upon.

The obligation to expropriate only as a last resort

17. States should refrain, to the maximum possible extent, from compulsorily acquiring housing or land, unless such acts are legitimate and necessary and designed to facilitate the enjoyment of human rights through, for instance, measures of land reform or redistribution. If, as a last resort, States consider themselves compelled to undertake proceedings of expropriation or compulsory acquisition, such action shall be: (a) determined and envisaged by law and norms regarding forced eviction, insofar as these are consistent with internationally recognized human rights; (b) solely for the purpose of protecting the general welfare in a democratic society; (c) reasonable and proportional; and (d) in accordance with the present Guidelines.

IV. THE RIGHTS OF ALL PERSONS

Integrity of the home

18. All persons have the right to adequate housing which includes, inter alia, the integrity of the home and access to and protection of common property resources. The home and its occupants shall be protected against any act of violence, threats of violence or other forms of harassment, in particular as they relate to women and children. The home and its occupants shall further be protected against any arbitrary or unlawful interference with privacy or respect of the home.

Assurances of security of tenure

19. All persons have a right to security of tenure which provides sufficient legal protection from forced eviction from one's home or land.

20. The present Guidelines shall apply to all persons, groups and communities irrespective of their tenure status.

V. LEGAL REMEDIES

21. All persons threatened with forced eviction, notwithstanding the rationale or legal basis thereof, have the right to:

(a) A fair hearing before a competent, impartial and independent court or tribunal;

(b) Legal counsel and, where necessary, sufficient legal aid;

(c) Effective remedies.

22. States should adopt legislative measures prohibiting any forced evictions without a court order. The court shall consider all relevant circumstances of affected persons, groups and communities and any decision should be in full accordance with principles of equality and justice and internationally recognized human rights.

23. All persons have a right to appeal any judicial or other decisions affecting their rights as established pursuant to the present Guidelines, to the highest national judicial authority.

Compensation

24. All persons subjected to any forced eviction not in full accordance with the present Guidelines should have a right to compensation for any losses of land or personal, real or other property or goods, including rights or interests in property not recognized in national legislation, incurred in connection with a forced eviction. Compensation should include land and access to common property resources and should not be restricted to cash payments.

Restitution and return

25. All persons, groups and communities subjected to forced evictions have the right, but shall not be forced to return to their homes, lands or places of origin.

Resettlement

26. In full cognizance of the contents of the present Guidelines, there may be instances in which, in the public interest or where the safety, health or enjoyment of human rights so demands, particular persons, groups and communities may be subject to resettlement. Such resettlement must occur in a just and equitable manner and in full accordance with the law of general application.

27. All persons, groups and communities have the right to suitable resettlement which includes the right to alternative land or housing which is safe, secure, accessible, affordable and habitable.

28. In determining the compatibility of resettlement with the present Guidelines, States should ensure that in the context of any case of resettlement the following criteria are adhered to:

(a) No resettlement shall take place until such time that a full resettlement policy consistent with the present Guidelines and internationally recognized human rights is in place;

(b) Resettlement must ensure equal rights to women, children and indigenous populations and other vulnerable groups, including the right to property ownership and access to resources. Resettlement policies should include programmes designed for women with respect to education, health, family welfare and employment opportunities;

(c) The actor proposing and/or carrying out the resettlement shall be required by law to pay any costs associated therewith, including all resettlement costs;

(d) No affected persons, groups or communities shall suffer detriment as far as their human rights are concerned, nor shall their right to the continuous improvement of living conditions be subject to infringement. This applies equally to host communities at resettlement sites and affected persons, groups and communities subjected to forced eviction;

(e) The affected persons, groups and communities must provide their full and informed consent as regards the relocation site. The State shall provide all necessary amenities and services and economic opportunities;

(f) Sufficient information shall be provided to affected persons, groups and communities concerning all State projects as well as the planning and implementation processes relating to the resettlement concerned, including information concerning the purpose to which the eviction dwelling or site is to be put and the persons, groups or communities who will benefit from the evicted site. Particular attention must be given to ensure that indigenous peoples, ethnic minorities, the landless, women and children are represented and included in this process;

(g) The entire resettlement process should be carried out in full consultation with and participation of the affected persons, groups and communities. States should take into account in particular all alternative plans proposed by the affected persons, groups and communities;

(h) If after a full and fair public hearing it is found that there is a need to proceed with the resettlement, then the affected persons, groups and communities shall be given at least ninety (90) days notice prior to the date of the resettlement; and

(i) Local government officials and neutral observers, properly identified, shall be present during the resettlement so as to ensure that no force, violence or intimidation is involved.

VI. MONITORING

29. The United Nations High Commissioner for Human Rights and other United Nations human rights institutions should seek by all possible means to secure full compliance with the present Guidelines.

VII. SAVING CLAUSE

30. The provisions contained within the present Guidelines are without prejudice to the provisions of any other international instrument or national law which ensures the enjoyment of all human rights as they relate to the practice of forced evictions.